Supreme Court of the United States.

No. 229.—October Term, 1904.

Henry Van Reed, Plaintiff in Error, vs. The Peoples' National Bank of Lebanon, Pennsylvania.	In error to the Court of Appeals of the State of New York.

[May 29, 1905.]

The plaintiff, who was the owner of a claim against the defendant, the Peoples' National Bank of Lebanon, Pennsylvania, commenced an action in the State of New York by levying an attachment upon the funds of the defendant in that State, upon the ground that it was a foreign corporation. The defendant, appearing specially for that purpose, moved to have the attachment vacated upon the ground that it was prohibited by the Revised Statutes of the United States. At special term the motion was denied; the appellate term reversed the judgment of the special term and vacated the attachment. The Court of Appeals answered two questions certified to it by the Appellate Division and affirmed the judgment of that court. The two questions propounded are as follows:

"1. Is the defendant exempt from attachment before judgment under section 5242, U. S. Revised Statutes?

"2. Are the rights claimed by plaintiff, to attachment against the defendant before judgment, and to the jurisdiction thereby acquired, preserved and given by section 4 of the act of Congress of July 12, 1882?"

The Court of Appeals, in affirming the judgment of the court below, answered the first question in the affirmative and the second question in the negative. The case was then brought to this court upon writ of error.

Mr. Justice Day delivered the opinion of the Court.

We deem the answer to the first question already determined by the decision of this court in *Pacific National Bank* v. *Mixter*, (124 U. S. 721.) The right of Congress to determine to what extent a State court shall be permitted to entertain actions against national banks and how far these institutions shall be subject to State control, is undeniable. National banks are quasi-public institutions, and for the purpose for which they are instituted are national in their character, and, within constitutional limits, are subject to the control of Congress and are not to be interfered with by State

legislative or judicial action, except so far as the lawmaking power of the Government may permit. Section 5242 of the Revised Statutes of the United States is as follows:

"All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national bank association, or of deposits to its credit; all assignments of mortgages, sureties, on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution shall be issued against such association or its property before final judgment in any suit, action or proceeding in any State, county or municipal court." (3 Compiled Statutes, 1901, p. 3517.)

The language of the latter clause of this section would seem to be too plain to admit of discussion as to its meaning. It in terms forbids the issuing of an attachment, injunction or execution against a national bank or its property before final judgment in any suit, action or proceeding in any State, county or municipal court. This was the view taken by this court in *Bank* v. *Mixter, supra.* The origin of section 5242, and its growth from previous enactments were pointed out by Mr. Chief Justice Waite, who delivered the opinion of the court in that case:

"It is clear to our minds that, as it stood originally as part of section 57, after 1873, and as it stands now in the Revised Statutes, it operates as a prohibition upon all attachments against national banks under the authority of the State courts. . . . It stands now, as it did originally, as the paramount law of the land, that attachments shall not issue from State courts against national banks, and writes into all State attachment laws an exception in favor of national banks. Since the act of 1873 all the attachment laws of the State must be read as if they contained a provision in express terms that they were not to apply to suits against a national bank."

Since the rendition of that decision it has been generally followed as an authoritative construction of the statute holding that no attachment can issue from a State court before judgment against a national bank or its property. (*Freeman Manufacturing Co.* v. *National Bank of the Republic*, 160 Mass. 398; *Planters' Loan and Savings Bank* v. *Berry*, 91 Ga. 264; *First National Bank of Kasson* v. *LaDue*, 39 Minn. 415; *First National Bank of Safford* v. *First National Bank of Plattsburg*, 61 Vt. 373; *Rosenheim Real Estate Co.* v. *Southern National Bank*, 46 S. W. [Tenn.] 1026; *Garner* v. *Second National Bank of Providence*, 66 Fed. Rep. 369.) It is argued by the plaintiff in error that the decision in the Mixter case, *supra*,

should be limited to cases where the bank is insolvent; but the statement of facts in that case shows that at the time when the attachment was issued the bank was a going concern and entirely solvent so far as the record discloses. The language of Chief Justice Waite, above quoted, is broad and applicable to all conditions of national banks, whether solvent or insolvent; and there is nothing in the statute, which is likewise specific in its terms, giving the right of foreign attachment as against solvent national banks. We find nothing in the case of *Earle* v. *Pennsylvania*, (178 U. S. 449,) which qualifies the decision announced in the Mixter case. We therefore conclude that the Mixter case is applicable here, and the decision therein announced meets with our approval.

The answer to the second question involves a consideration of the act relating to national banks of July 12, 1882, sec. 4, (22 Stat. at Large, 162,) which is as follows:

"That any association so extending the period of its succession shall continue to enjoy all the rights and privileges and immunities granted, and shall continue to be subject to all the duties, liabilities, and restrictions imposed by the Revised Statutes of the United States and other acts having reference to national banking associations, and it shall continue to be in all respects the identical association it was before the extension of its period of succession: *Provided, however*, That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such national banking associations may be doing business when such suits may be begun. And all laws and parts of laws of the United States inconsistent with this proviso be and the same are hereby repealed."

There is nothing in this section enlarging the right of attachment against national banks. Before the passage of this section Circuit Courts of the United States had jurisdiction of suits against national banks because they were corporations of Federal origin. It was the purpose of this legislation to deprive such banks of the right to invoke the jurisdiction of the Federal courts simply upon the ground that they were created by and exercised their powers under the acts of Congress. (*Petrie* v. *Commercial Bank*, 142 U. S. 644; *Continental National Bank* v. *Buford*, 191 U. S. 119–123.) It regulated the jurisdiction of the courts to entertain such actions against corporations of this character, and had nothing to do with the kind and character of remedies which could be had against them. Certainly there is nothing in the act repealing the prior provisions of section 5242, above quoted.

It is further insisted that whether or not the lien is absolute upon the property of the bank, jurisdiction is obtained of it by the issuing of the

attachment; but we cannot take this view. There was no personal service in the court of original jurisdiction, and the attachment being without the power of the court by reason of the terms of the Federal statute, no jurisdiction was acquired in the case, either over the person or property of the defendant. We see no error in the judgment of the Court of Appeals of New York, and the same is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.